

MAGISTRATE JUDGE J KELLEY ARNOLD

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

MICHAEL A JACKSON,

Plaintiff,

v

BRIAN GAIN, et al ,

Defendants.

NO. C01-263FDB

DEFENDANTS' ANSWER TO  
PLAINTIFF'S CIVIL RIGHTS  
COMPLAINT AND DEMAND  
FOR JURY TRIAL

COME NOW the Defendants, by and through their attorneys, CHRISTINE O GREGOIRE, Attorney General, and MICHAEL G. BALLNIK, Assistant Attorney General, and hereby submit their Answer to Plaintiff's Complaint

**I. PLACE OF CONFINEMENT**

1 Defendants admit that from April 5, 2001, to May 7, 2001, Plaintiff was incarcerated at the Washington Corrections Center in Shelton, Washington. Defendants deny that Plaintiff exhausted the administrative grievance process concerning the facts relating to this Complaint prior to bringing this action.

///

///

**II. PARTIES**

2 Defendants admit that the Plaintiff is Michael A. Jackson, Washington  
3 Department of Corrections Number 722278 Defendants admit that Plaintiff has named Dieter  
4 Burckhardt, Nancy Davies, Tracy Johnson, Eugene Ricker, Sharon Thach, James Tucker and  
5 Lawrence Turner as the Defendants in this action, and that these individuals are employed at the  
6 Washington Corrections Center in Shelton, Washington.

**III. STATEMENT OF THE CLAIM**

9 In answer to **page 1** of the **Claim** section of Plaintiff's Complaint.

10 3 Defendants deny that Corrections Officer Turner assaulted him in his cell while  
11 he was sleeping on March 27, 2001

12 4. Defendants admit that Corrections Officer Turner entered Plaintiff's cell, but deny  
13 that Corrections Officer Turner approached Plaintiff's bed and deny that Corrections Officer  
14 Turner was standing over the Plaintiff

15 5 Defendants deny that Corrections Officer Turner hit the Plaintiff in order to  
16 awaken him.

17 6 Defendants admit that Corrections Officer Turner informed Plaintiff that he could  
18 not remain in bed under the covers.

19 7. Defendants admit that no other correctional officer was present and that the  
20 Plaintiff had no cellmate at this time

21 8. Defendants deny that Plaintiff asked Corrections Officer Turner the reason he hit  
22 Plaintiff.

1           9.       Defendants admit that Corrections Officer Turner left the cell and closed the door  
2 behind him.

3           10.       Defendants admit that Plaintiff met with Sergeant Ricker on March 28, 2001,  
4 regarding the alleged assault by Corrections Officer Turner  
5

6           11.       Defendants admit that Sergeant Ricker spoke with Corrections Officer Turner  
7 regarding Plaintiff's allegations.

8           12.       Defendants are without sufficient information and belief to respond to, and  
9 therefore deny, the assertion that Plaintiff contacted the United States Department of Justice  
10 regarding the alleged assault

11           13       Defendants deny that they took any action in response to the Plaintiff's alleged  
12 letter to the United States Department of Justice.  
13

14           14.       Defendants admit that Sergeant Ricker and Custody Unit Supervisor Nancy  
15 Davies met in the unit Sergeant's Office with the Plaintiff on April 5, 2001.

16           15       Defendants deny that Sergeant Ricker ordered corrections officers to take down  
17 the Plaintiff and handcuff him at the time Plaintiff entered the office

18           16.       Defendants admit that Plaintiff attempted to run out of the unit Sergeant's Office,  
19 but deny that corrections officers approached the Plaintiff before he attempted to run out of the  
20 office.  
21

22           17.       Defendants admit that Plaintiff went through the office door, but deny that the  
23 Plaintiff was knocked through the office door by the corrections officers.  
24  
25  
26

1           18       Defendants are without sufficient information and belief to respond to, and  
2 therefore deny, any other allegations or assertions on page one of the Claim section of Plaintiff's  
3 Complaint.

4           In answer to **page 2** of the **Claim** section of Plaintiff's Complaint:

5           19.       Defendants admit that Plaintiff was placed on the floor, but deny that Plaintiff was  
6 slammed to the floor and that unreasonable force was used to detain him.  
7

8           20       Defendants deny that the Plaintiff was not informed to comply with their attempts  
9 to handcuff him by putting his hands behind his back.

10          21.       Defendants are without sufficient information or belief to respond to, and  
11 therefore deny, the assertion that other inmates were walking around and that those inmates were  
12 told to return to their cells  
13

14          22       Defendants admit that the Plaintiff was taken to the medical infirmary for a  
15 routine use of force examination.

16          23.       Defendants deny that Plaintiff was caused any injury

17          24.       Defendants admit that Plaintiff then was placed in the Intensive Management  
18 Unit  
19

20          25       Defendants deny that Plaintiff was retaliated against at any time.

21          26       Defendants are without sufficient information and belief to respond to, and  
22 therefore deny, any other allegations or assertions on page two of the Claim section of Plaintiff's  
23 Complaint

24       ///

25       ///

1 In answer to **page 3** of the **Claim** section of Plaintiff's Complaint:

2 27. Defendants admit that an administrative segregation hearing was held on April 9,  
3 2001 to determine the Plaintiff's custody classification level.

4 28. Defendants deny that Plaintiff was retaliated against at any time

5 29 Defendants are without sufficient information and belief to respond to, and  
6 therefore deny, any other allegations or assertions on page three of the Claim section of  
7 Plaintiff's Complaint not specifically admitted.  
8

9 In answer to **page 4** of the **Claim** section of Plaintiff's Complaint:

10 30 Defendants admit that there was another administrative hearing on or about April  
11 23, 2001, and that Mr Tucker and Mr Johnson were present at this hearing.

12 31. Defendants admit that Plaintiff initially was referred to the Washington State  
13 Penitentiary mental health unit.  
14

15 32. Defendants admit that Plaintiff stated that he did not want to be transferred to the  
16 Washington State Penitentiary.

17 33. Defendants are without sufficient information and belief to respond to, and  
18 therefore deny, any other allegations or assertions on page four of the Claim section of Plaintiff's  
19 Complaint not specifically admitted.  
20

21 In answer to **page 5** of the **Claim** section of Plaintiff's Complaint:

22 34. Defendants deny that Acting Superintendent Carol Porter told the Plaintiff on  
23 April 26, 2001, that he did not err in refusing to get on the bus to go to the Washington State  
24 Penitentiary that morning  
25  
26

1           35     Defendants admit that Plaintiff subsequently was referred to the Monroe  
2 Corrections Center Special Offender Center in Monroe, Washington.

3           36.     Defendants deny that Plaintiff has been harassed or retaliated against.

4           37.     Defendants are without sufficient information and belief to respond to, and  
5 therefore deny, any other allegations or assertions on page five of the Claim section of Plaintiff's  
6 Complaint.  
7

8           38.     Defendants deny all other allegations made by Plaintiff, except those specifically  
9 admitted above.

10                                   **IV.     CLAIMS FOR RELIEF**

11           39     Defendants deny that Plaintiff is entitled to any of the relief set forth in the **Relief**  
12 section of his Complaint.  
13

14                                   **V.     AFFIRMATIVE DEFENSES**

15           **BY WAY OF FURTHER ANSWER AND AFFIRMATIVE DEFENSES, THE**  
16 **DEFENDANTS AFFIRMATIVELY ALLEGE THAT:**

17           40     The actions of prison officials further legitimate penological goals and are  
18 therefore constitutional even when infringing upon fundamental constitutional rights.  
19


20           41.     The Plaintiff failed to exhaust the administrative grievance process concerning all  
21 facts relating to the Complaint prior to bringing this action.

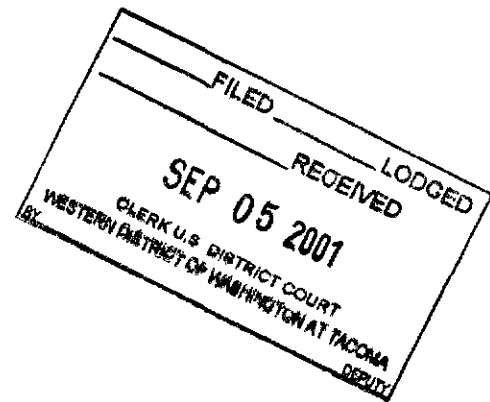
22           Wherefore, having fully answered the Complaint of the Plaintiff and having stated  
23 affirmative defenses, Defendants pray for judgment dismissing the Complaint and action with  
24 prejudice, directing that Plaintiff take nothing thereby and awarding the Defendants costs and  
25 reasonable attorney's fees herein.  
26

1       Should the matter proceed to trial, Defendants demand that all issues of fact be  
2 determined by a jury

3       DATED this 4<sup>th</sup> day of September, 2001.

4                                   CHRISTINE O GREGOIRE  
5                                   Attorney General

6                                     
7                                   MICHAEL G. BALLNIK, WSB# 27422  
8                                   Assistant Attorney General  
9                                   Attorney for Defendants  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



MAGISTRATE JUDGE J KELLEY ARNOLD

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL A JACKSON,

Plaintiff,

v.

BRIAN GAIN, et al ,

Defendants.

NO C01-263FDB

AFFIDAVIT OF SERVICE BY  
MAILING

STATE OF WASHINGTON )  
County of Thurston ) ss.

BETTY A. GOOD, being first duly sworn on oath deposes and says:

That I am a citizen of the United States, over the age of eighteen years, and competent to be  
a witness herein.

That on the 4<sup>th</sup> day of September 2001, I deposited in the United States mail, postage  
prepaid, addressed as follows

MICHAEL A JACKSON, #722278  
MONROE CORRECTIONAL COMPLEX  
SPECIAL OFFENDER CENTER  
PO BOX 514  
MONROE WA 98272

AFFIDAVIT OF SERVICE BY  
MAILING

1

ATTORNEY GENERAL OF WASHINGTON  
Criminal Justice Division  
PO Box 40116  
Olympia, WA 98504-0116  
(360) 586-1445



1 copies of the following document(s): DEFENDANTS' ANSWER TO PLAINTIFF'S CIVIL  
2 RIGHTS COMPLAINT AND DEMAND FOR JURY TRIAL and AFFIDAVIT OF SERVICE BY  
3 MAILING

4  
5 Betty A. Good

6 SUBSCRIBED AND SWORN to before me this 4<sup>th</sup> day of September 2001

7 Lisa A. DeKerman

8 Lisa A. DeKerman (PRINTED NAME)

9 Notary Public in and for the

State of Washington My

Commission Expires: 1-27-03